

CONTRACT FOR SPECIAL SERVICES CONTRACT PHARMACY SERVICES

This Contract (hereafter referred to as “Contract” or “Agreement”) for special services is entered into by and between the County of San Luis Obispo (hereafter referred to as “County”), a public entity and legal subdivision of the State of California, and Contract Pharmacy Services, Inc., a Pennsylvania corporation qualified to do business in California (hereafter referred to as “Contractor”).

WHEREAS, presently, County is providing healthcare services to inmates under the control of the San Luis Obispo County Jail, in San Luis Obispo, California. As part of its responsibility to provide healthcare to inmates under their custody, San Luis Obispo County Jail must provide prescription drugs and other medications to inmates (hereinafter “Prescription Items”).

WHEREAS, Contractor is a licensed pharmacy and has all requisite professional licenses and DEA registration to provide medication in the State of California.

WHEREAS, Contractor is specially trained, experienced, expert, and competent to perform such services; and

WHEREAS, the County has not previously used County Civil Service or other Contract employees to provide the services herein described; and

WHEREAS, Contractor and the County of San Luis Obispo enter into this Contract defining the relationships and responsibilities of the parties to this Contract.

NOW THEREFORE, in consideration for the promises, obligations, and covenants contained herein, the parties agree as follows:

1. Scope of Services. Contractor agrees to provide the Scope of Services set out in Exhibit A attached hereto and made a part thereof by this reference.
2. Compensation and Billing for Services. Contractor shall be compensated by County for performing said services in accordance with Exhibit B, attached hereto, and incorporated herein by reference.
3. Term of Contract. The effective date and duration of this Contract shall be as specified in Exhibit C, attached hereto and incorporated herein by reference.
4. General Conditions. Contractor and County shall comply with all applicable provisions of the General Conditions, attached hereto as Exhibit D and incorporated herein by reference.
5. Special Conditions. Contractor and County shall comply with all applicable provisions of the Special Conditions attached hereto as Exhibit E and incorporated herein by reference.
6. Business Associate Agreement. Contractor and County shall comply with all applicable provisions of the Business Associate Agreement attached hereto as Exhibit F and incorporated herein by reference.

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IN WITNESS WHEREOF County and Contractor have executed this Contract on the day
and year hereinabove set forth.

CONTRACTOR:

Contract Pharmacy Services, Inc.
A Pennsylvania Corporation

Tax ID: Held in Confidential File

By: 


Date: 12/6/14

Printed Name: WAYNE STATTER

Title: CEO

Approved as to form and legal effect.

Rita L. Neal
County Counsel

By: 
Deputy County Counsel

Date: 11/17/14

COUNTY OF SAN LUIS OBISPO:
A Public Entity in the State of California

By: _____
Chairperson of the Board of Supervisors

Date: _____

ATTEST:

By: _____
Julie Rodewald, County Clerk and Ex-Officio
Clerk of the Board of Supervisors

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**EXHIBIT A – INDEPENDENT CONTRACTOR
SCOPE OF SERVICES**

1. Scope of Services.

During the term of this Agreement, Contractor agrees to provide the following services at the County:

- a. Fill and Deliver Prescriptions: Contractor will fill all Prescription Items daily, Monday through Saturday. All Prescription Items transmitted to Contractor before 2:00PM Pacific Standard Time daily, Monday through Friday, will be delivered the next day. All Prescription Items ordered before 9:00AM Pacific Standard Time on Saturday will be filled and delivered to the County the next working day (usually Monday) unless the County is notified otherwise. All Prescription Items will be filled and delivered to the County within 24 hours, unless notified otherwise. Contract Pharmacy Services will be closed on six (6) holidays per year, as listed below:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

Contractors will notify the County in advance of any changes in the schedule for ordering and/or delivery due to holidays. The County should utilize onsite stock and/or the emergency pharmacy service during holiday closings.

- b. Emergency Service: Contractor will arrange with a local pharmacy to act as "backup" in case of an emergency that cannot be handled through the normal delivery procedure. Contractor will provide the County staff with a procedure for contacting a pharmacist and/or the backup pharmacy. In the event the local pharmacy must be used, Contractor will charge the County the same amount as billed by the local pharmacy. Contractor will provide the County with an emergency phone number to contact the "on call" pharmacist in the event that the medical staff needs to consult with a pharmacist after normal business hours. The "on call" pharmacist will answer medication related questions and assist the County in procedural issues.
- c. Dispensing System: Contractor will dispense all Prescription Items via a "blister card" medication dispensing system.
- d. Medication Quantities: Contractor shall dispense Prescription Items in quantities sufficient to provide medication for 30 doses initially, and will adjust the quantity upward depending upon the incarceration period of the inmate. This is subject to the California Board of Pharmacy regulations and instructions of the prescribing practitioner.
- e. Controlled Substances: Contractor shall provide all prescribed controlled substances in blister cards for easy accountability and will dispose of unused controlled substances, at no expense to County, and in accordance with applicable State and Federal regulations.

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- f. Starter Stock: If allowed by state regulations, Contractor shall maintain a starter stock system at the County. Items will be determined in consultation with the County's Healthcare Administrator, Correctional Nurse Supervisor, and Medical Director.
- g. Emergency Medications: Contractor shall maintain a drug box located at the County. Items in the emergency drug box will be determined in consultation with the County's Healthcare Administrator, Correctional Nurse Supervisor, and Medical Director.
- h. Generic Medications: Contractor shall dispense all prescriptions generically, unless there is no generic substitute. All drugs will be obtained from manufacturers with an AB rating or better by the FDA.
- i. Meetings & Inspections: Contractor shall conduct quarterly Pharmaceutical and Therapeutic Committee meetings with medical staff at the County. Site inspections of the County's med room will be performed by a Contractor employee (or local pharmacist under contract to Contractor) at no cost to the County. These meetings and inspections meet the current standards for NCCHC, ACA, and AJA accreditation.
- j. Medication Carts: Contractor will (if requested) provide the County with a sufficient number of medication carts to store and administer medications at the County. Medication carts will be maintained by Contractor in good working condition and are expected to last at least three (3) years under normal circumstances. Contractor requests the assistance of medical staff in making sure the carts are maintained. The carts are the property of Contractor and will be returned by the County in the event the contract is terminated.
- k. Fax Machines: Contractor agrees to provide fax machines for the transmission of physicians' orders to the pharmacy. Supplies for the fax machine (toner, paper, etc) will be the responsibility of the County. A toll-free number will be provided to the County for fax and voice communication.
- l. eCorrRxTM: Contractor will provide eCorrRxTM, a proprietary computerized physicians' order entry (CPOE) system, to the medical unit at County. eCorrRxTM will eliminate the need for nursing staff to transcribe physicians' orders by hand. The County will provide a broadband (DSL, Cable, TI) connection at its expense for the operation of the system; All hardware provided for use of the eCorrRxTM system remains property of Contractor and will be returned by the County in the event the contract is terminated.
- m. Reports: Contractor will provide County with monthly reports on pharmaceutical usage.
- n. Medication Administration Records (MARs): Contractor will provide County with computer generated Medication Administration Records (MARs), if requested, to be delivered no later than the 27th day of each month for the following month on all inmates who have prescribed medications. Hardware utilized with the eCorrRxTM system will enable the County to print MARs onsite.

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**EXHIBIT B – INDEPENDENT CONTRACTOR
COMPENSATION AND BILLING FOR SERVICES**

1. Compensation.

For the services to be provided as documented in paragraph 3 above, Contractor shall charge for its services based upon the following pricing formula:

- a. All prescription medications will be billed based on Contractor's Actual Acquisition Cost (AAC) plus a dispensing fee as designated below;

Dispensing fee for Brand Name (single source) prescription drugs = AAC plus \$3.25.

Dispensing fee for Generic (multiple source) prescription drugs = AAC plus \$3.25.

Dispensing fee for Over the Counter (OTC) drugs = AAC plus \$1.75.

- b. Contractor will allow credit for the return of unused medications. No credit will be given for partial bottles of liquid medications, eye/ear preparations, or topical medications. All medications must be returned in the original container in which they were issued and have an expiration date of three (3) months or more.

Credit will be issued at Contractor's cost. Medications returned with a total value less than \$2.00 will not be credited. There is not a processing fee for each blister card returned for credit. The original dispensing fee charged is not credited upon return of medications. Controlled substances cannot be returned to Contractor, since they must be destroyed according to DEA regulations.

2. Payment for Reimbursement

Contractor shall submit a cost-based itemized bill no later than the thirtieth (30th) day of each month for all services performed during the previous calendar month. County shall pay all undisputed items per the approved budget within thirty (30) days of the receipt of each bill. The last billing shall be submitted no later than the month following the date of termination of this contract. If County requires special procedures for payment of invoices (i.e. purchase orders, multiple copies, electronic billing, etc.) they must notify Contractor before the beginning of the contract. Contractor will make every effort to comply with the payment procedures required by the County.

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**EXHIBIT C – INDEPENDENT CONTRACTOR
TERM OF CONTRACT**

1. Effective Date.

The effective date of this contract is December 1, 2014. The County of San Luis Obispo shall be the last to sign this contract and any amendments thereto. All obligations imposed on both parties shall be binding on both parties commencing on the effective date and shall remain in effect until satisfied by performance.

2. Term.

Unless terminated earlier, pursuant to the provisions of this contract, the term of this contract shall be from its effective date until November 30, 2017.

3. Renewal.

Except as otherwise provided below, this contract may be renewed for three successive one year terms immediately following the initial term, subject to the same contract provisions.

4. Delegation of Authority to Renew.

The Board of Supervisors expressly delegates to the Health Agency Director the authority to renew this contract on the same terms and conditions stated herein, contingent on prior funding approval. In no event shall this contract be extended beyond June 30, 2020.

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**EXHIBIT D – INDEPENDENT CONTRACTOR
GENERAL CONDITIONS**

1. Independent Contractor.

Contractor shall be deemed to be an independent contractor of County. Nothing in this Contract shall be construed as creating an employer-employee relationship, partnership or a joint venture relationship. Nothing in this Contract authorizes or permits the County to exercise direction or control over the professional manner in which Contractor provides services. Contractor's services shall be provided in a manner consistent with all applicable standards and regulations governing such services.

2. No Eligibility for Fringe Benefits.

Contractor understands and agrees that Contractor and its personnel are not, and will not be, eligible for membership in or any benefits from any County group plan for hospital, surgical, or medical insurance, or for membership in any County retirement program, or for paid vacation, paid sick leave, or other leave, with or without pay, or for any other benefit which accrues to a County employee.

3. Warranty of Contractor for Provision of Services.

The Contractor warrants that Contractor has obtained and shall keep in full force and effect during the term of this Contract all permits, registrations and licenses necessary to accomplish the work specified in the Contract. Contractor warrants that it, and each of the personnel employed or otherwise retained by Contractor, will at all times, to the extent required by law, be properly certified and licensed under the local, Federal, State, and Local laws and regulations applicable to the provision of services herein.

4. Warranty of Contractor – Compliance with all Laws.

The Contractor warrants that Contractor shall keep informed of, observe, and comply with, and cause all of its agents and personnel to observe and comply with all Federal, State, and local laws and rules and regulations made pursuant to such laws, which in any way affect the conduct of work under this contract. If any conflict arises between provisions of the scope of work or specifications in this Contract and any law, then the Contractor shall immediately notify the County in writing.

5. Power and Authority of Contractor.

If the Contractor is a corporation, contractor represents and warrants that it is and will remain, throughout the term of this contract, either a duly organized, validly existing California corporation in good standing under the laws of the State of California or a duly organized, validly existing foreign corporation in good standing in the state of incorporation and authorized to transact business in the State of California.

6. Non-Assignment of Contract.

Inasmuch as this Contract is intended to secure the specialized services of the Contractor, Contractor shall not delegate, assign, or otherwise transfer in whole or in part its rights or obligations under this Contract without prior written consent of County. Any such assignment, transfer, or delegation without the County's prior written consent shall be null and void.

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7. Entire Contract and Modifications.

This Contract supersedes all previous contracts between the parties hereto on the same subject matter and constitutes the entire understanding of the parties hereto on the subject matter of this contract. Contractor shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Contractor specifically acknowledges that in entering into and executing this contract, Contractor relies solely upon the provisions contained in this Contract and no others.

8. Governing Law and Venue.

This Contract shall be governed by, and construed in accordance with, the laws of the State of California, without regard to its conflict of laws provisions. All parties' rights and obligations created hereunder shall be performed in the County of San Luis Obispo, State of California and such County shall be the venue for any action or proceeding that may be brought, or arise out of, this Contract.

9. Waiver.

No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Contract shall impair any such right power or privilege, or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right power or privilege or the exercise of any other right, power or privilege. No waiver shall be valid unless made in writing and signed by the party against whom enforcement of such waiver is sought, and then, only to the extent expressly specified therein.

10. Severability.

The Contractor agrees that if any provision of this Contract is found to be invalid, illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Upon determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Contract so as to effectuate the original intent of the parties as closely as possible.

11. Nondiscrimination.

Contractor agrees that it will abide by all federal and state labor and employment laws and regulations prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sexual orientation, disability, national origin, or other legally protected criteria.

12. Notices.

All notices given or made pursuant hereto shall be in writing and shall be deemed to have been duly given if delivered personally, mailed by registered or certified mail (postage paid, return receipt requested) or sent by a nationally recognized overnight courier (providing proof of delivery) to the parties at the following addresses, or sent by electronic transmission to the following facsimile numbers (or at such other address or facsimile number for a party as shall be specified by like notice):

Jeff Hamm, Health Agency Director
Health Agency
County of San Luis Obispo

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2180 Johnson Avenue
Health Campus, 2nd Floor
San Luis Obispo, CA 93401
Fax: (805) 781-1273

And to Contractor at:

Wayne J. Shafer, President & Chief Executive Officer
Contract Pharmacy Services
125 Titus Avenue
Warrington, Pennsylvania 18976

Any such notice shall be deemed to have been received if: (a) in the case of personal delivery or facsimile transmission with confirmation retained, on the date of such delivery; (b) in the case of nationally recognized overnight courier, on the next business day after the date sent; (3) in the case of mailing, on the third business day following posting.

13. Inspection Rights.

The Contractor shall allow the County to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Contract and to inspect, evaluate and audit any and all books, records and facilities maintained by Contractor and subcontractors, pertaining to such service at any time during normal business hours. Books and records include, without limitation, all physical records originated or prepared pursuant to the performance under this Contract including work papers, reports, financial records and books of account. Upon request, at any time during the period of this Contract, and for a period of five years, thereafter, the Contractor shall furnish any such record, or copy thereof, to County.

14. Headings.

The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this contract.

15. Signatory Authority.

Contractor warrants that it has full power and authority to enter into and perform this contract, and the person signing this Contract warrants that he or she has been properly authorized and empowered to enter into this contract.

16. Indemnification.

To the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend and indemnify the County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by sole negligence or willful misconduct of the County.

17. Insurance.

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. If

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the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the contractor.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

a. **Commercial General Liability (CGL)**

Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b. **Automobile Liability**

ISO Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

c. **Workers' Compensation**

Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage shall also include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

d. **Professional Liability/Errors and Omissions**

Insurance covering Contractor's liability arising from or related to this Contract, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

e. **Additional Insured Status**

The County, its officers, officials, employees, and volunteers are to be covered as insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

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f. Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

g. Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the County.

h. Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the required insurance shall constitute a material breach of the Contract, upon which the County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. The County, at its sole discretion, may obtain damages from Contractor resulting from said breach.

i. Waiver of Subrogation

Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

j. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

k. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.

l. Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

- (1) The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- (2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work
- (3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

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m. Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

n. Verification of Coverage

Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Certificates and copies of any required endorsements shall be sent to:

County of San Luis Obispo
Public Health Department Administration
2180 Johnson Ave
San Luis Obispo, CA 93401
Attention: Michelle Infantino, Administrative Services Officer

o. Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

p. Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

18. Non-appropriation of Funds.

In the event that the term of this Contract extends into fiscal years subsequent to that in which it was approved, continuation of the Contract is contingent on the appropriation of funds by the San Luis Obispo County Board of Supervisors or, if applicable, the provision of State or Federal funding source. If County notifies Contractor in writing that the funds for this Contract have not been appropriated or provided, this Contract will terminate. In such an event, the County shall have no further liability to pay any funds to the Contractor or to furnish any other consideration under this contract, and the Contractor shall not be obligated to perform any provision of this Contract or to provide services intended to be funded pursuant to this contract. If partial funds are appropriated or provided, the County shall have the option to either cancel this Contract with no liability to the County or offer a Contract amendment to the Contractor to reflect the reduced amount.

19. Force Majeure.

Neither the County nor the Contractor shall be deemed in default in the performance of the terms of this Contract if either party is prevented from performing the terms of this Contract by causes beyond its control, including without limitation: acts of God; rulings or decisions by municipal, federal, state or other governmental bodies; any laws or regulations of such municipal, federal, state or other governmental bodies; or any catastrophe resulting from flood fire, explosion, or other causes beyond the control of the defaulting party. Any party delayed by force majeure

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shall, as soon as reasonably possible, give the other party written notice of the delay. The party delayed shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance under this contract.

20. Fiscal Records.

Contractor shall maintain accurate fiscal records pertaining to services performed under this Contract. Such fiscal records shall be open for inspection to County Auditors at any reasonable time and will reflect cost accounting that conforms to generally accepted accounting procedures. Contractor shall maintain such records and accounts for a minimum of five years, or in the case of an audit, until audit findings are resolved, whichever is later.

21. Fiscal Controls.

Contractor shall adhere to the accounting requirements, financial reporting, and internal control standards as described in the County of San Luis Obispo Auditor-Controller Contract Accounting Handbook, (Handbook) which contains the minimum required procedures and controls that must be employed by Contractor's accounting and financial reporting system, and which is incorporated herein by reference. The Handbook may be modified from time to time and Contractor shall comply with modifications from and after the date modified. Contractor shall require subcontractors to adhere to the Handbook for any services funded through this contract, unless otherwise agreed upon in writing by County.

- i. The Handbook is available at <http://www.slocounty.ca.gov/AC/>, under Policies and Procedures or at the Auditor-Controller's Office, 1055 Monterey Street Room D220, County Government Center, San Luis Obispo CA, 93408,
- ii. The Office of Management and Budget (OMB) circulars are available at <http://www.whitehouse.gov/omb/circulars>.

22. County Audit.

County may audit Contractor's fiscal records under this Contract at any time with fourteen (14) days advance written notice. County audits shall be conducted in accordance with generally accepted audit standards, which includes without limitation, verification that services billed by the Contractor were actually provided to County. Contractor shall provide County with on-site access to all reasonable documents, records and other supporting information for billing and services under this Contract.

23. State Audit.

Pursuant to California Government Code section 8546.7, every County contract involving the expenditure of funds in excess of ten thousand dollars (\$10,000) is subject to examination and audit of the State auditor for a period of three years after final payment under the contract. Contractor shall permit the State Auditor to have access to any pertinent books, documents, papers and records for the purpose of said audit.

24. Nondisclosure.

All reports, information, documents, or any other materials prepared by Contractor under this Contract are the property of the County unless otherwise provided herein. Contractor shall not disclose such reports, information, documents and other materials without County's prior written consent. Any requests for information shall be forwarded to County along with all copies of the

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information requested. County shall make the sole decision about whether and how to release information according to law.

25. Conflict of Interest.

Contractor acknowledges that Contractor is aware of and understands the provisions of sections 1090, et.seq., and 87100, et. seq., of the Government Code, which relate to conflicts of interest of public officers and employees. Contractor certifies that Contractor is unaware of any financial or economic interest of any public officer or employee of the County relating to this contract. Contractor agrees to comply with applicable requirements of Government Code section 87100, et. seq., during the term of this contract.

26. Immigration Reform and Control Act.

Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Contract are aware of and understand the Immigration Reform and Control Act ("IRCA") of 1986, Public Law 99-603. Contractor certifies that Contractor is and shall remain in compliance with IRCA and shall ensure that any subcontractors hired by Contractor to perform services under this Contract are in compliance with IRCA.

27. Third Party Beneficiaries.

It is expressly understood that the enforcement of the terms and conditions and all rights of action related to enforcement, shall be strictly reserved to County and Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other third person.

28. Tax Information Reporting.

Upon request, Contractor shall submit its tax identification number or social security number, whichever is applicable, in the form of a signed W-9 form, to facilitate appropriate fiscal management and reporting.

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**EXHIBIT E – INDEPENDENT CONTRACTOR
SPECIAL CONDITIONS**

1. Termination for Convenience.

Either party may terminate this Contract at any time by giving the other party at least 30 calendar days' written notice of termination for convenience ("Notice of Termination for Convenience"). Termination for convenience shall be effective at 11:59 p.m., Pacific Standard Time, on the intended date for termination (the "Termination Date"). The terminating party shall deliver to the other party a notice specifying the date upon which such termination will become effective, which shall be at least 30 calendar days after the date of the notice.

Termination for convenience shall have no effect upon the rights and obligations of the parties arising out of any services that were provided prior to the effective date of such termination. Contractor shall be paid for all work satisfactorily completed prior to the effective date of termination. After receiving a Notice of Termination for Convenience, Contractor shall, unless directed by County, place no further subcontracts for services or materials, terminate all subcontracts to the extent they relate to the work terminated, and settle all outstanding liabilities arising from the termination of subcontracts.

2. Termination for Cause.

- a. If the County determines that there has been a material breach of this Contract by Contractor that poses a threat to health and safety, the County may immediately terminate the contract. In addition, if any of the following occur, County shall have the right to terminate this Contract effective immediately upon giving written notice to the Contractor:
 - (1) Contractor fails to perform his duties to the satisfaction of the County; or
 - (2) Contractor fails to fulfill in a timely and professional manner his obligations under this contract; or
 - (3) Contractor fails to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the County; or
 - (4) Any requisite licenses or certifications held by Contractor are terminated, suspended, reduced, or restricted; or
 - (5) Contractor has not, to the satisfaction of the County, documented or has not sufficiently documented services provided by Contractor, which includes without limitation, failure to meet industry standards or failure to satisfy any special requirements needed by third party payors or federal or state funding agencies; or
 - (6) Contractor has failed or refused to furnish information or cooperate with any inspection, review or audit of Contractor's program or County's use of Contractor's program. This includes interviews or reviews of records in any form of information storage; or
 - (7) Contractor fails to comply with any provision of the Health Agency Compliance Plan and Code of Ethics.
- b. Contractor's obligations to provide services shall automatically terminate on the effective date of termination.
- c. For all other material breaches of this contract, County must give Contractor written notice setting forth the nature of the breach. If Contractor fails to remedy said breach within ten (10) days from the date of the written notice, County may terminate the contract. Contractor shall thereafter have no further rights, powers, or privileges against County under or arising out of this contract.

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- d. In the event a breach does not result in termination, but does result in costs being incurred by County, said costs shall be charged to and paid by Contractor. Such costs may include, but are not limited to, costs incurred by County in investigating and communicating with Contractor regarding said breach, including staff time.

3. Accounting for Travel and Lodging.

In the event that the scope of services expressly contemplates payment for travel and lodging, these costs must be reasonable and in no event shall exceed levels allowed for County employees on official business.

4. Compliance with Health Care Laws.

Contractor agrees to abide by all applicable local, State and Federal laws, rules, regulations, guidelines, and directives for the provision of services hereunder, including without limitation, the applicable provisions of the Civil Code, Welfare and Institutions Code, the Health and Safety Code, the Family Code, the California Code of Regulations, the Code of Federal Regulations, and the Health Insurance Portability and Accountability Act. This obligation includes, without limitation, meeting delivery of service requirements, guaranteeing all client's rights provisions are satisfied, and maintaining the confidentiality of patient records.

5. Consistency in Level of Services.

As a condition for reimbursement, Contractor shall provide to, and ensure that clients served under this contract, receive the same level of services as provided to all other clients served regardless of status or source of funding.

6. Nondiscrimination.

- a. Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Human services, effective June 2, 1977, and found in the Federal Register, Volume 42, No.86 dated May 4, 1977.
- b. Contractor shall comply with the provisions of the Americans with disabilities Act of 1990, the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulation promulgated thereunder (Title 2 Section 7285 et seq.) The Contractor shall give written notice of its obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- c. Contractor shall not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference or mental or physical handicap.

7. Quality Assurance.

Contractor agrees to conduct a program of quality assurance and program review that meets all requirements of the State Department of Health Services. Contractor agrees to cooperate fully with program monitoring or other programs that may be established by County to promote high standards of health care to clients at economical costs.

8. Confidentiality.

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Contractor shall abide by all applicable local, state and federal laws, rules, regulations, guidelines, and directives regarding the confidentiality and security of patient information, including without limitation, Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code, Section 431.300 et seq. of Title 42 of the Code of Federal Regulations, the Health Insurance Portability and Accountability Act (HIPAA) and its implementing regulations, including but not limited to Title 45 CFR Parts 142, 160, 162 and 164, and the provisions of Exhibit F.

9. Screening for Inspector Generals' Excluded Provider List and Medi-Cal List of Excluded Providers.

At the time of securing a new employee or service provider, Contractor shall conduct or cause to be conducted a screening and provide documentation to County certifying that its new employee or service provider is not listed on the Excluded Provider List of the Office of the Inspector General or the Medi-Cal List of Excluded Providers. On an annual basis, Contractor shall conduct or cause to be conducted a screening of all employees, contractors or agents and shall sign a certification documenting that neither Contractor nor any of its employees, contractors or agents are listed on the Excluded Provider List of the Office of the Inspector General or the Medi-Cal List of Excluded Providers. Documentation shall be forwarded to the Contracts Coordinator for inclusion in the Contract file.

10. License Information.

Contractor shall provide County a list of all licensed persons who may be providing services under this contract. The list shall include the name, title, professional degree, license number, and National Provider Identification Number.

11. Training Program.

Contractor will maintain active in-service and other training programs as provided in Title 22 of the California Code of Regulations, Health Information Portability and Accountability Act, and other appropriate regulations, and as required. Contractor shall maintain a record of all training provided to each staff member and present it to County upon request.

12. Record Keeping and Reporting of Services.

Contractor shall:

- a. Keep complete and accurate records for each client treated pursuant to this contract, which shall include, but not be limited to, diagnostic and evaluation studies, treatment plans, progress notes, program compliance, outcome measurement and records of services provided in sufficient detail to permit an evaluation of services without prior notice. Such records shall comply with all applicable Federal, State, and County record maintenance requirements.
- b. Submit informational reports as required by County on forms provided by or acceptable to County with respect to Contractor's program, major incidents, and fiscal activities of the program.
- c. Collect and provide County with all data and information that County deems necessary for County to satisfy state reporting requirements, which shall include, without limitation, Medi-Cal cost reports.

13. Equipment.

Contractor shall furnish all personnel and equipment for the performance of services pursuant to this contract, including supplies, equipment, telephone, furniture, utilities, and quarters necessary for the performance of services.

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14. Other Employment.

Contractor shall retain the right to provide services at another facility or to operate a separate private practice; subject, however, to the conditions that:

- a. No such private practice shall be conducted or solicited on County premises.
- b. Such other employment shall not conflict with the duties, nor the time periods within which to perform those duties, described in this contract.
- c. The insurance coverage provided by the County or by the Contractor for the benefit of the County herein is in no way applicable to or diminished by any other employment or services not expressly set forth in this contract.

15. Gifts.

Gifts may not be charged to this Contract, whether to Contractor staff or anyone else.

16. Power to Terminate.

The Health Agency Director may effectuate termination of this Contract without the need for action, approval, or ratification by the Board of Supervisors.

17. Amendments without Board Action.

The Board of Supervisors delegates to the Health Agency Director the authority to amend the Contract to provide for additional services and increase compensation to Contractor in an amount not to exceed the lesser of the following amounts: ten percent (10%) of the Contract total or twenty-five thousand dollars (\$25,000.00).

The Board of Supervisors delegates the authority to the Health Agency Director to amend this Contract to exchange types of services at the rates listed for each respective service.

Any amendment made pursuant to a delegation of authority will only be effective if, prior to the commencement of services, the amendment is memorialized in writing, is approved by County Counsel, and is signed by the Health Agency Director. Except as expressly provided herein, no contractual provision may be modified under this delegation of authority.

18. Standards for Charitable Accounting.

Contractors who are nonprofit corporations shall abide by the Standards for Charitable Accountability and applicable OMB Circulars.

19. Confidentiality of Substance Abuse Treatment.

Substance abuse treatment information, including without limitation, the identity of program participants or the fact that services are being provided is confidential and may not be disclosed except as authorized by law. Contractor and its officers, agents and employees agree to obey all applicable laws and regulations, including without limitation the provisions of the Health Information Portability and Accountability Act, The Public Health Service Act (42 U.S.C. 290ee-3), Title 42 of the Code of Federal Regulations, Exhibit F, and any other applicable Federal, State or local laws, regulations, directives, or guidelines.

20. Inspection of Records by Local, State or Federal Agency.

The Contractor shall allow the County, the State Department of Health Services, United States Department of Health and Human Services (HHS), the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this

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Contract and to inspect, evaluate and audit any and all books, records, and facilities maintained by Contractor, pertaining to such service at any time during normal business hours.

Books and records include, without limitation, all physical records originated or prepared pursuant to the performance under this Contract including work papers, reports, financial records, books of account, beneficiary records, prescription files, and any other documentation pertaining to covered services and other related services for beneficiaries. Upon request, at any time during the period of this contract, and for a period of five years thereafter, the Contractor shall furnish any such record, or copy thereof, to the County Health Agency, DHS, HHS.

21. Disentanglement.

Contractor warrants that in the event of any expiration or termination of this contract, Contractor will take all actions necessary to accomplish a complete and timely transition to the County, or to any replacement provider, of the Services being terminated (a "Disentanglement") without any material impact on the Services. Contractor shall cooperate with County and otherwise take all steps reasonably required to assist County in effecting a complete and timely Disentanglement. Contractor shall provide County with all information regarding the Services or is otherwise needed for Disentanglement.

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**EXHIBIT F – INDEPENDENT CONTRACTOR
BUSINESS ASSOCIATE AGREEMENT**

1. General Provisions and Recitals.

A. All terms used, but not otherwise defined below herein, have the same meaning as in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and their implementing regulations at 45 CFR Parts 160 through 165 (“HIPAA regulations”) (collectively along with state law privacy rules as “HIPAA laws”) as they may exist now or be hereafter amended.

B. A business associate relationship under the HIPAA laws between Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County under the Agreement.

C. County wishes to disclose to Contractor certain information pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”), as defined by the HIPAA laws, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Agreement.

D. The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of the HIPAA laws.

E. The HIPAA Privacy and Security rules apply to Contractor in the same manner as they apply to County. Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement.

2. Definitions.

A. “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor’s workforce in relation to the protection of that information.

B. “Agent” shall have the meaning as determined in accordance with the federal common law of agency.

C. “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA laws which compromise the security or privacy of the PHI.

(1) Breach excludes:

(a) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of

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authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

(b) Any County PHI that has been inadvertently disclosed shall not be further used or disclosed except in compliance with law.

(c) A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

(2) Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

(a) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

(b) The unauthorized person who used the PHI or to whom the disclosure was made;

(c) Whether the PHI was actually acquired or viewed; and

(d) The extent to which the risk to the PHI has been mitigated.

D. "County PHI" means either: (1) PHI disclosed by County to Contractor; or (2) PHI created, received, maintained, or transmitted by Contractor pursuant to executing its obligations under the Contract.

E. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

F. "Minimum Necessary" shall mean the Privacy Rule Standards in 45 CFR §164.502(b) and §164.514(d)(1).

G. "Physical Safeguards" are physical measures, policies, and procedures to protect Contractor's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion required by the HIPAA laws.

H. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

3. Obligations and Activities of Contractor as a Business Associate.

A. Contractor agrees not to use or further disclose County PHI other than as permitted or required by this Business Associate Agreement or as required by law.

B. Contractor agrees to use appropriate safeguards and other legally-required safeguards to prevent use or disclosure of County PHI other than as provided for by this Business Associate Agreement.

C. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic County PHI.

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D. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of County PHI by Contractor in violation of the requirements of this Business Associate Agreement or HIPAA laws.

E. Contractor shall ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Agreement to Contractor with respect to such information.

F. Contractor agrees to provide access, within ten (10) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524 or any other provision of the HIPAA laws.

G. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within fifteen (15) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

H. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA laws.

I. Contractor agrees to document any Disclosures of County PHI that Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

J. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, any information collected in accordance with the Agreement, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with the HIPAA laws.

K. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA laws Contractor will comply with the requirements of the HIPAA laws that apply to County in the performance of such obligation.

L. Contractor shall honor all restrictions consistent with 45 C.F.R. §164.522 that the County or the Individual makes the Contractor aware of, including the Individual's right to restrict certain disclosures of PHI to a health plan where the individual pays out of pocket in full for the healthcare item or service, in accordance with HITECH Act Section 13405(a).

M. Contractor shall train and use reasonable measures to ensure compliance with the requirements of this Business Associate Agreement by employees who assist in the performance of functions or activities on behalf of County under this Contract and use or disclose protected information; and discipline employees who intentionally violate any provisions.

N. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Agreement of which Contractor becomes aware. Contractor must report to County Breaches of County PHI in accordance with the HIPAA laws.

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O. Contractor shall notify County within twenty-four (24) hours of discovering any Security Incident, including all data Breaches or compromises of County PHI, however, both parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

(1) A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

(2) Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other Agent of Contractor, as determined by federal or state common law of agency.

(3) Contractor's initial notification shall be oral and followed by written notification within 24 hours of the oral notification.

(4) Oral notification shall be made to the HIPAA Privacy Officer by calling 805-781-5500 and to the HIPAA Security Officer by calling 805-781-4911. Written notification shall be sent to the following address:

HIPAA Privacy Officer
San Luis Obispo County Public Health Department
2191 Johnson Avenue
San Luis Obispo, CA 93401

(5) Contractor's notification shall include, to the extent possible:

(a) The identification of each Individual whose County PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

(b) Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

(i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

(ii) A description of the types of County PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(iii) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

(iv) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

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(v) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

P. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

Q. In the event that Contractor is responsible for a Breach of County PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with Paragraph O and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

R. Contractor shall maintain documentation of all required notifications to County of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

S. Contractor shall provide County all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than ten (10) calendar days after Contractor's initial notice of the Breach to County.

T. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

U. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

6. Permitted Use and Disclosure by Contractor.

A. Contractor may use or further disclose County PHI as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by County except for the specific Uses and Disclosures set forth below.

(1) Contractor may use County PHI, if necessary, for the proper management and administration of Contractor or to carry out legal responsibilities of Contractor.

(2) Contractor may disclose County PHI for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

(a) The Disclosure is required by law; or

(b) Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of

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which it is aware in which the confidentiality of the information has been breached.

(3) Contractor may use or further disclose County PHI to provide Data Aggregation services relating to the Health Care Operations of Contractor.

B. Contractor shall make Uses, Disclosures, and requests for County PHI consistent with the Minimum Necessary principle as defined herein.

C. Contractor may use or disclose County PHI as required by law.

7. Obligations of County.

A. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.

B. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI.

C. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI.

D. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

8. Business Associate Termination.

A. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Agreement, County shall:

(1) Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or

(2) Have the discretion to unilaterally and immediately terminate the Agreement, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) calendar days.

B. Upon termination of the Agreement, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.

(1) This provision shall apply to all PHI that is in the possession of Subcontractors or Agents of Contractor.

(2) Contractor shall retain no copies of the PHI.

(3) In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Agreement to such PHI and limit further Uses and Disclosures of such PHI to

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those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

C. The obligations of this Business Associate Agreement shall survive the termination of the Contract.